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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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11 In re SEQUENOM, INC.
12 STOCKHOLDER LITIGATION

Lead Case No. 16-cv-02054-JAH-BLM
CLASS ACTION

13 This Document Relates To:
14
15 ALL ACTIONS.
16

**ORDER GRANTING DEFENDANTS'
MOTION TO STAY**

17 **INTRODUCTION**
18

19 Pending before the Court are Defendant Sequenom, Inc.'s ("Sequenom" or
20 "Defendnat") Motion to Dismiss and Motion to Stay. (Doc. Nos. 56, 90). Also
21 pending are Defendant's Requests for Consideration of Documents and Judicial
22 Notice in support of its pending motion to dismiss and Plaintiffs' Motion to Strike
23 (Doc. Nos. 56-29, 62, 65). The motions are fully briefed. See *Doc. Nos.* 62- 65. The
24 Court found these motions suitable for determination on the papers submitted and
25 without oral argument. Civ LR 7.1(d.1). For the reasons set forth below, the Court
26 GRANTS Defendants' motion to stay the action pending the Supreme Court's
27 decision in *Emulex Corp. v. Varjabedian*, --- S. Ct. ----, 2019 WL 98542 (2019).
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BACKGROUND

In this shareholder class action lawsuit, the First Consolidated Amended Class Action Complaint (“FAC”) alleges that Sequenom and eight of its former board members violated sections 14(e) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) by issuing a false and misleading recommendation statement advising Sequenom shareholders to tender their shares pursuant to a tender offer. *Doc. No. 54*. Plaintiffs further allege that Defendants offered flawed and unreliable financial projections as the most accurate view of the company’s prospects.

Defendant Sequenom and Defendants Kenneth F. Buechler (“Buechler”), Myla Lai-Goldman (“Lai-Goldman”), Richard A. Lerner (“Lerner”), Ronald M. Lindsay (“Lindsay”), Catherine J. Mackey (“Mackey”), O’Boyle, David Pendarvis (“Pendarvis”), Charles P. Slacik (“Slacik”) and Dirk van den Boom (“van den Boom”) (collectively, “Individual Defendants”) filed a 12(b)(6) motion to dismiss, challenging Plaintiffs’ complaint for failure to adequately plead: (1) falsity, (2) scienter, and (3) loss causation.

Since the filing of Defendants’ motion to dismiss, the parties have filed multiple notices of controlling, persuasive, and not so persuasive authority from various courts. *See doc. nos. 66, 73, 78, 79, 84* (notices of recent authority); *see also doc. nos. 67, 77, 80, 82, 85, 89* (responses). The most recent response notified this Court that the Supreme Court granted *certiorari* to review the Ninth Circuit decision in *Varjabedian v. Emulex Corp.*, 888 F.3d 399 (9th Cir. 2018) (“*Varjabedian*”). *Doc. No. 89; Emulex Corp. v. Varjabedian*, --- S. Ct. ----, 2019 WL 98542 (2019). Despite contrary holdings in five other circuits, the Ninth Circuit held in *Varjabedian* that claims under Section 14(e) of the Exchange Act do not require a showing of scienter; only negligence. *See Varjabedian*, 888 F.3d at 404-405. The grant of *certiorari* prompted Defendants to file a motion to stay pending the Supreme Court decision.

1 *Doc. No. 90.* Defendants’ motion to dismiss and motion to stay are now before the
2 Court.

3 **LEGAL STANDARD**

4 A court’s power to stay proceedings is incidental to its inherent power to
5 control the disposition of its cases in the interests of efficiency and fairness to the
6 court, counsel, and litigants. *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936). In
7 the interest of judicial economy, a stay may be granted pending the outcome of other
8 legal proceedings related to the case. *Leyva v. Certified Grocers of Cal., Ltd.*, 593
9 F.2d 857, 863–64 (9th Cir. 1979). The exercise of discretion is appropriate when the
10 resolution of another matter will have a direct impact on the issues before the court,
11 substantially simplifying issues presented. *Mediterranean Enters v. Ssangyong*
12 *Corp.*, 708 F.2d 1458 (9th Cir. 1983); *San Diego Padres Baseball P’ship v. United*
13 *States*, 2001 WL 710601, at (S.D. Cal. May 10, 2001).

14 The “proponent of a stay bears the burden of establishing its need.” *Clinton v.*
15 *Jones*, 520 U.S. 681, 708 (1997) (citation omitted). In determining whether a stay is
16 appropriate, the court “must weigh competing interests and maintain an even
17 balance.” *Landis*, 299 U.S. at 254–55. These competing interests include:

18 [T]he possible damage which may result from the granting of a stay, the
19 hardship or inequity which a party may suffer in being required to go forward,
20 and the orderly course of justice measured in terms of the simplifying or
21 complicating of issues, proof, and questions of law which could be expected
to result from a stay.

22 *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299 U.S. at
23 254–55). “[A] stay should not be granted unless it appears likely the other
24 proceedings will be concluded within a reasonable time.” *Dependable Highway*
25 *Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (quoting
26 *Leyva*, 593 F.2d at 864).

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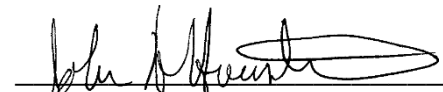
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1 The Supreme Court has set oral argument in *Emulex v. Varjabedian* for April
2 15, 2019.¹ Therefore, the issue presented will likely be determined within in a
3 reasonable time. *See Leyva*, 593 F.2d at 864. The stay will neither be long nor
4 indefinite. *See Young v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000). Accordingly,
5 the Court defers ruling on Defendants' motion to dismiss and request for judicial
6 notice pending resolution of the *Varjabedian* case and GRANTS Defendants'
7 motion to stay the entire action.

8 **IT IS SO ORDERED.**
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11 DATED: March 12, 2019

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13 HON. JOHN A. HOUSTON
14 UNITED STATES DISTRICT JUDGE
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26 ¹*See*
27 [https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/pub](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-459.html)
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